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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LISA DIONE MARSHALL,

Defendant and Appellant.

D049507

(Super. Ct. No. SCS199966)

APPEAL from a judgment of the Superior Court of San Diego County, Raymond Edwards, Jr., Judge. Affirmed.

A jury convicted Lisa Dione Marshall of burglary (Pen. Code, § 459),¹ petty theft (§ 484), possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a)) and falsely identifying herself to a law enforcement officer (§ 148.9, subd. (a)). Marshall waived jury on allegations of prior convictions and in a bifurcated hearing the court

¹ All statutory references are to the Penal Code unless otherwise specified.

found she had a prior theft conviction (§ 666), a prior strike (§§ 667, subds. (b)-(i), 1170.12) and had served four prior prison terms (§ 667.5, subd. (b)). The court sentenced her to prison for eight years: double the two-year middle term for burglary with a prior strike, enhanced by four 1-year terms for the prior prison terms. It stayed sentence for conviction of petty theft with a prior theft conviction and imposed concurrent terms for possessing a controlled substance and falsely identifying herself to a law enforcement officer. While Marshall's appeal was pending before this court, the Supreme Court requested the file be transferred to that court. The file was transferred as requested and has been returned. The record does not indicate why the Supreme Court requested the file be transferred or the outcome of the matter underlying the transfer.

FACTS

Viewing the record in the light most favorable to the judgment below (*People v. Johnson* (1980) 26 Cal.3d 557, 576), the following occurred. On January 25, 2006, Dominic Walker was working at a check stand at an Albertson store in Chula Vista when he saw Marshall pass through the check stands toward an exit with a shopping cart containing meat and alcoholic beverages. Marshall had not paid for the items in the shopping cart. The merchandise was worth \$286.09. Walker stopped Marshall and asked her to return to the store. He took her to an office. Marshall told Walker her gas and electricity had been turned off, that her child was home sitting in the dark, and a friend told her that she would be given money for the bills if she brought back some items from the store. Walker called police. Uniformed Chula Vista Police Officer Edward Tugashov responded. Walker told Tugashov he had detained Marshall for

shoplifting. Marshall was in the store's security office. Marshall told Tugashov she had no identification with her. She identified herself as Lisa Bradley. Tugashov ran a records check and it came back negative under the name Lisa Bradley. Tugashov asked Marshall why she had been detained and she responded that her gas and electricity had been turned off and a neighbor offered to pay her half of the value of items, including meat and alcohol, that Marshall stole from the store. Marshall did as her neighbor suggested. Marshall told Tugashov she placed items in a shopping cart and walked out of the store without paying for the items. Tugashov arrested Marshall.

Before going to the Albertsons store, Tugashov had checked the rear seat of the patrol car for contraband. After Marshall was placed in the patrol car and taken to the police station, Tugashov found a plastic bag containing 0.4 grams of methamphetamine in the rear seat of the patrol car where Marshall had been sitting.

The defense called no witnesses.

DISCUSSION

Appointed appellate counsel has filed a brief setting forth the evidence in the superior court. Counsel presents no argument for reversal but asks this court to review the record for error as mandated by *People v. Wende* (1979) 25 Cal.3d 436. Pursuant to *Anders v. California* (1967) 386 U.S. 738, counsel refers to as possible but not arguable issues: (1) whether the trial court erred in admitting into evidence Marshall's admissions to Walker made without a *Miranda* warning (*Miranda v. Arizona* (1966) 384 U.S. 436); (2) whether Marshall was in custody while speaking with Tugashov in the security office; (3) whether the trial court reversibly erred in admitting into evidence Marshall's

admissions to Officer Tugashov made without a *Miranda* warning, and (4) whether Marshall was denied effective assistance of counsel through her trial counsel's failure to object to admission of the statements she made to police.

We granted Marshall permission to file a brief on her own behalf. She has responded. Marshall contends that Officer Tugashov denied her "any mental health assistance and failed to put [her] request in the police report." She continues, "[f]ailure on Officer Tugashov's[] part to read me my rights and to acknowledge my asking to be taken to CMH [San Diego County Mental Health Services], by not entering that request in the police report and neglecting to transport me there are all violations of my rights." She also contends she was denied effective assistance of counsel through her trial attorney failing "to immediately seek the proper validation to effectively ascertain my mental capacity at the time of the act."

Request for Mental Health Assistance and the Police Report

Neither information regarding the issue of whether Officer Tugashov should have taken Marshall to a mental health facility, nor whether Officer Tugashov properly included in the police report all matters he should have included, is reflected by the record before this court. If the record on appeal sheds no light on claims made on appeal, the claim must be rejected. In such cases, claim is more appropriately raised in a petition for writ of habeas corpus. (See *People v. Carter* (2003) 30 Cal.4th 1166, 1211, citing *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

Advisement of Rights

In *People v. Morris* (1991) 53 Cal.3d 152, 197, the Supreme Court said, "*Miranda* requires that a criminal suspect be admonished of specified Fifth Amendment rights. But in order to invoke its protections, a suspect must be subjected to *custodial interrogation*, i.e., he must be 'taken into custody or otherwise deprived of his freedom in any significant way.' [Citation.] '[T]he ultimate inquiry is simply whether there is "a formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'"

In determining whether a suspect has been placed in custody short of formal arrest, the court should consider the site of the questioning, whether the investigation has focused on the accused, whether indicia of arrest are present, and the length of the questioning. No one factor is dispositive. Here, the questioning took place in the store's security office. Marshall had been detained for suspected shoplifting. The questioning appears to have been brief. Officer Tugashov was in full uniform, including a gun on his belt. However, because no objection was lodged, the merit of a claim that Marshall made the statement in violation of *Miranda* cannot be raised on appeal. (*People v. Holt* (1997) 15 Cal.4th 619, 666.)

Effective Assistance of Counsel

The record does not reflect information on the issue of whether Marshall's trial counsel adequately investigated and researched her mental capacity. If Marshall wishes to pursue matters that go beyond the record before this court, she must file a petition for a writ of habeas corpus in the trial court.

A review of the entire record pursuant to *People v. Wende, supra*, 25 Cal.3d 436, including the possible issues referred to pursuant to *Anders v. California, supra*, 386 U.S. 738, and the issues raised by Marshall, has disclosed no reasonably arguable appellate issue. Competent counsel has represented Marshall on this appeal.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.